

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TYLER ERDMAN,

Plaintiff,

against

ADAM VICTOR,

Defendant.

Case No.: 1:20-cv-04162
(LGS)(GWG)

**AFFIDAVIT OF ALFRED
POLIZZOTTO, III**

STATE OF NEW YORK

ss: .

COUNTY OF KINGS

1. I am counsel for the Defendant in the abovementioned action and I make this Affidavit in response to the January 4, 2024 order of the Court directing me to show cause why Mr. Rodriguez and I should not be sanctioned pursuant to FRCP 16(f)(1)(C) for failing to comply with this Court's order of December 21, 2023 and failing to timely apply to extend the Court-ordered deadline pertaining to the production of certain privilege log entries by December 28, 2023.

2. As set forth in the affidavit of Emilio Rodriguez, Jr. in response to the instant Order to Show Cause, Mr. Rodriguez had a good faith belief that he would be able to comply with the statements made during the Court conference of December 21, 2023. Unfortunately, as detailed in his affidavit, he experienced an unanticipated family emergency which jeopardized the safety of his immediate family lasting from Christmas Eve and continuing through the deadline of December 28, 2023.

3. While this incident does not excuse the failure to apply to this Court for an extension prior to the expiration of the December 28, 2023, it does put it into some context. Mr. Rodriguez, while dealing with both the legal and personal issues outlined in his affidavit, did not ignore his obligations to the Plaintiff and the Court's deadline. Mr. Rodriguez contacted the Plaintiff as indicated in his letter to the Court of January 3, 2024 (Document 216) and the Plaintiff agreed to production of the privilege log documents in an additional week. Plaintiff in his letter dated January 2, 2024 to this Court (Document 215) acknowledges that the Plaintiff and Mr. Rodriguez spoke about the production on December 29, 2023.

4. Mr. Rodriguez admittedly should have requested that this Court grant an extension of time for the production of the privilege log material before December 28, 2023. Despite the holidays and Mr. Rodriguez's personal tribulations, this application should have been made in a timely manner. I was not aware of the personal matters which Mr. Rodriguez has been encountering with his family and the length of time and efforts he has expended in connection with them. Mr. Rodriguez did not make me aware of them until after the Court ordered this matter to be heard via Order to Show Cause. I do not countenance those actions but understand that Mr. Rodriguez was under a good faith belief that he would be able to meet the mandates of this Court and his personal obligations.

5. The privilege log material has now been provided to the Plaintiff. As guided by the relevant case law set forth in the accompanying Memorandum of Law, the actions complained of herein were not done wilfully or in bad faith, they were not an intentional flouting of this Court's directives. It is respectfully submitted that the failure to adhere to the

Court directive and failure to seek an extension thereof is excusable as it did not substantially prejudice the ability of the Plaintiff to continue the prosecution of this action and resulted in a minimal delay in the production of the required material to the Plaintiff.

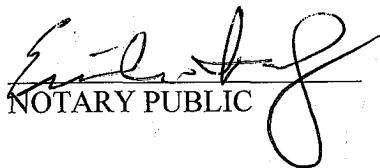
6. I have expressed my extreme displeasure with the actions of Mr. Rodriguez, not in defending his family, but rather his failure to inform me and address this Court's deadlines in a timely fashion. I would request that the Court in making its determination as to the imposition of sanctions take into account the personal difficulties that Mr. Rodriguez has endured and continues to endure.

WHEREFORE, it is respectfully submitted that this Court make a determination that sanctions are not warranted in this matter and for such other and further relief as this Court deems just and proper.

Dated: Brooklyn, New York
January 12, 2024


ALFRED POLIZZOTTO, III

Sworn to before me on
January 12, 2024


NOTARY PUBLIC

EMILIO RODRIGUEZ
Notary Public, State of New York
Registration No. 02RO6321688
Qualified in Queens County
Commission Expires 7/30/27